

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOSEPH V. LAGANA,

Plaintiff,

v.

SAN FRANCISCO POLICE DEPT,

Defendant.

No. 08-cv-03392 CW

ORDER GRANTING
DEFENDANT'S MOTION
TO REMAND AND
STRIKE PLAINTIFF'S
UNAUTHORIZED
FOURTH AMENDED
COMPLAINT, AND
DENYING
DEFENDANT'S
REQUEST FOR
SANCTIONS

Plaintiff filed suit against Defendant in the Superior Court of California for the City and County of San Francisco, Case No. CGC-08-475803, on May 29, 2008. The case was removed by Defendant to federal court. Docket No. 1. On October 14, 2009, this Court granted Defendant's motion for summary judgment on Plaintiff's federal claims, and remanded Plaintiff's state claims to state court. After the Ninth Circuit dismissed Plaintiff's appeal, Plaintiff sought to remove his case to federal court. Federal law does not authorize a plaintiff to remove a state court action to federal court. 28 U.S.C. § 1441(a). Therefore, the Court GRANTS Defendant's motion to remand the case.

In addition to filing a notice of removal, Plaintiff filed a

1 Fourth Amended Complaint. Plaintiff did not seek leave of the
2 Court prior to filing his Fourth Amended Complaint, and does not
3 have the opposing party's written consent, as required by Federal
4 Rule of Civil Procedure 15. For this reason, the Court GRANTS
5 Defendant's motion to strike Plaintiff's Fourth Amended Complaint.

6 The Court DENIES Defendant's request for sanctions against
7 Plaintiff. A motion for sanctions must be made separately from any
8 other motion, and must describe the specific conduct warranting
9 sanctions. Fed. R. Civ. P. 11(b) and (c)(2). Defendant's request
10 fails to comply with these requirements.

11 IT IS SO ORDERED.

12
13
14 Dated 11/3/2010



CLAUDIA WILKEN
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

JOSEPH LAGANA,

Plaintiff,

v.

SAN FRANCISCO POLICE DEPT et al,

Defendants.

Case Number: CV08-03392 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 3, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Joseph Victor Lagana
1121 Willow St.
Alameda, CA 94501

Dated: November 3, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk

United States District Court
For the Northern District of California